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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/176,124	10/21/1998	GERHARD SCHNEIDER	10191/857	7808
26646	7590	06/15/2004	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			OLSEN, KAJ K	
			ART UNIT	PAPER NUMBER
			1753	
DATE MAILED: 06/15/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Abandonment

Application No.

09/176,124

Examiner

Kaj K Olsen

Applicant(s)

SCHNEIDER ET AL.

Art Unit

1753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on _____.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☒ The decision by the Board of Patent Appeals and Interference rendered on 3-12-2004 and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

 6/10/04

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

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Applicant again argues that Yamada '806 or Yamada '807 does not have a "covering layer".

This argument is not persuasive. In either patent, the cell at either the top or the bottom of the sensor can be considered to meet applicant's "measuring cell layer", while the other of the top and bottom layer can be considered the "covering layer". There is simply no language in applicant's claims to exclude either the top or the bottom layer of either Yamada reference from being a "covering layer". Even when the top or bottom layer constitutes a cell, it nevertheless can also function as a "covering layer". Whether the patents intended such a layer to perform as a "covering layer" is also irrelevant.

Applicant's attention is again directed to the fact that in Yamada '806 the top layer in figure 9 is apparently being mislabelled as 13'a, which is really one of the two intermediate layers. See col. 6, lines 37-42. The top layer is actually layer 13.

Applicant also argues that the heater layer plane is not centered with respect to the center element.

This argument is not persuasive, since in both Yamada patents the heater is considered to be essentially centered with respect to the sensor element.


Applicant further argues that his newly-proposed limitation "at least one electrode, each electrode arranged on a respective surface of the measuring cell layer" is not met by the Yamada patents because in each case an intermediate board is arranged between the oxygen pump element

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and the oxygen concentration cell element and metallic electrode layers are "attached" to both sides of each element (see page 5, lines 1-8 of the Aug. 12, 2002 response).

This argument is totally confusing. In either Yamada, the cell element at the top or the bottom of the sensor has an electrode on each side of a solid electrolyte element. For instance, cell element 1 of Yamada '807 has electrodes 9 and 10 on opposite sides thereof. Thus, the measuring cell layer has an electrode on each surface thereof. The electrodes are not on the intermediate board (e.g. element 3 of Yamada '807). In fact, it is not understood how the intermediate board is even an issue as far as the question of locating electrodes on respective surfaces of the measuring cell layer is concerned. Applicant appears to have either misinterpreted the references or misstated his argument. In any event, applicant should clarify his position as to how the newly-proposed language distinguishes over the references.

The examiner can be reached at 703-308-3329. His supervisor Jill Warden can be reached at 703-308-4037. Any general inquiry should be directed to the receptionist at 703-308-0661. A fax number for TC 1700 is 703-872-9311.


Ta Tung

Primary Examiner

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